



# CITY OF HOUSTON

Office of the Mayor

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**Interoffice**

Correspondence

**To:** All Members of City Council

**From:** Mayor Bill White

**Date:** February 6, 2007

**CC:** Arturo Michel; Elena Marks;  
Stephen Williams; Karl Pepple;  
Loren Raun; Michael Moore;  
Marty Stein; Frank Michel;  
Patrick Trahan

**Subject:** Modern Nuisance Laws

Neighbors should not send toxic chemicals to the property of their neighbors. That's an old and widely accepted principle of law.

Houston has generally good air quality. It has gotten demonstrably better in some respects over the last 30 years, because of Clean Air laws. Air quality can get better still.

We asked top scientists to evaluate those chemicals in the air which pose significant health risks, and those that do not. Most did not. Some did. We want to reduce the amounts of the worst.

Our approach should be practical. It should give emitters time to adjust to new expectations. It should be based on reductions to levels defined by health-based scientific criteria, and not be "regulation for regulation's sake." Our approach should not demonize an entire industry. A cleaner industry will face fewer hurdles to expansion in our region, without endangering public health.

We have been talking about this for some time now. Two years ago we held hearings, which focused on one serious carcinogen, 1, 3 butadiene. We retained an excellent lawyer to pursue a claim against the largest emitter. Under good and responsible management, the firm agreed to a settlement. Since then butadiene concentrations in the air have been cut by 58%.

The extensive monitoring program begun by the TCEQ and expanded by the City, along with scientific expertise now available in our Health Department, has given us new capabilities to identify those responsible for excessive concentrations of chemicals such as benzene in the air.

Our region has not had any regional plan to decrease the concentrations of high-risk chemicals such as benzene. We think we should have such a plan. We think firms should have a fair and reasonable incentive to participate in the plan. The success of this plan will depend on the participation of

identified major emitters. Actions by one or two firms individually would be insufficient to ensure progress.

The plan has been developed over an extended period of time. Federal, state and county regulators have been kept informed and invited to participate. We have begun a process for seeking comments and endorsements of the plan.

We could, as we did in 2005, decide to bring a legal action under the common law against firms putting toxic chemicals into the air. So that our enforcement policies are publicly and transparently established, City staff has drafted defined public health standards to be placed in our nuisance ordinance.

The Administration welcomes public discussion of both the benzene plan and changes to the nuisance ordinance, just as we have welcomed public discussion of the scientific reports on health risks posed by some chemicals.

I will be asking for information from a variety of sources, including the industry and environmental advocates, on five issues listed below. I welcome your thoughts and the common sense of Council Members as we receive this information.

#### **Issues for Stakeholder Discussion re Air Toxics**

1. For air toxics such as 1, 3 butadiene, benzene, and formaldehyde, shouldn't there be a plan for the reduction in ambient levels within this airshed, with responsibilities and timetables assigned to each firm?
2. We have developed the draft of such a plan for benzene. What specific comments do you have about it? We are open to suggestions.
3. If some major emitters reduce air toxic emissions through investments and operational changes, shouldn't there be some consequence for those who do not? If so, what should they be?
4. If local nuisance laws were used for this purpose, what principles should apply to enforcement? How can we best ensure that the local standard applies to reach all substantial emitters within the air shed?
5. Are there firms which cannot reduce benzene emissions over the next five years and remain profitable? If so, what are their gross profits at these plants for the last five years and what are the estimated costs of benzene reductions and how can these figures be audited by financial and engineering experts in an appropriate fashion? Should economic hardship to a particular firm result in some special treatment?